

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

THE UNITED STATES OF AMERICA,

Plaintiff,

versus

3:06 CR 387

LAMONT McCORD,

Defendant

Before: HONORABLE RICHARD L. WILLIAMS
United States District Judge

December 18, 2007

Richmond, Virginia

GILBERT F. HALASZ
Official Court Reporter
U. S. Courthouse
701 East Broad Street
Richmond, VA 23219

APPEARANCES

Peter S. Duffey, Esq.
Assistant United States Attorney
For the United States

Jeffery Lee Everhart, Esq.
Theodore Daivd Bruns, Esq.
For the defendant
The Defendant
In his own proper person

Simmons - direct

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1 THE CLERK: Case number 3:06 CR 387.

2 The United States of America versus Lamont E. McCord.

3 The United States is represented by Peter Duffey.

4 The defendant is represented by Jeffrey Everhart and
5 Theodore Bruns.

6 Are counsel ready to proceed?

7 MR. DUFFEY: United States is ready, Your Honor.

8 THE COURT: Proceed, Mr. Duffey.

9 MR. DUFFEY: Good afternoon, Judge.

10 Your Honor, we are here for the sentencing of Lamont
11 E. McCord.

12 Mr. McCord pled guilty to counts one, two and three
13 of the superseding indictment on the morning of trial back
14 on September 24th, 2007. The United States is ready to
15 go forward, has no objections or corrections to the
16 presentence investigation report.

17 Judge, I do have one witness that I would like to
18 call.

19 THE COURT: All right.

20 This is a victim impact statement?

21 MR. DUFFEY: It is, Judge. I would like to call Ms
22 Simmons. She would like to address The Court as well.

23 THE COURT: You may proceed.

24 MR. DUFFEY: I call Bernadine Simmons.

25 BERNADINE SIMMONS

Simmons - direct

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1 WAS SWORN AND TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. DUFFEY:

4 Q Good afternoon, ma'am.

5 A Good afternoon.

6 Q If you would, state your full name, spell the last
7 name for the court reporter, please.

8 A My name is Bernadine A. Simmons. Last name is
9 S-I-M-M-O-N-S.

10 Q Ms Simmons, you knew Michael Simmons; is that
11 correct?

12 A Yes, I did.

13 Q He is the victim in this case.

14 A Yes.

15 Q How do you know him?

16 A He is my son.

17 Q All right.

18 You were living in North Carolina at the time of his
19 death; correct?

20 A Yes, I am.

21 Q Can you explain to The Court how Michael's death has
22 affected you and your family?

23 A I have prepared a statement to that effect that I
24 would like to read as a part of the record if that would
25 please The Court.

Simmons - direct

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1 Q Okay.

2 THE COURT: You may proceed.

3 THE WITNESS: To the Honorable Judge Williams,
4 officers of the court, participants, spectators, and
5 others. I am here this afternoon to tell you how the
6 death of my son, my only child, has affected my life and
7 affected how I live. Michael's death has been the most
8 profound occurrence in my life. When I say "profound," I
9 mean that there is no experience even remotely close to
10 not having him in this life and not having him in my life.

11 I think about him every day. That is every day.
12 That means not a day goes by without my son blazing in my
13 consciousness above everything else. I see him on the
14 street, in the mall, driving a car, in the audience, on
15 television, some young man who resembles him, walks like
16 him, has a similar facial profile, and I hear him in the
17 crowd, in the store, on the radio. Always when I least
18 expect it. The pain always is with me. Sometimes it is
19 so strong and acute that I think I am going to fall, and I
20 have to stop what I am doing and breathe slowly. Other
21 times the tears are so thick in my eyes that my vision
22 gets clouded. And if I am driving, I have to be very
23 careful, pause for a little while, I just can't see.

24 I am told by other parents who have lost a child that
25 I can expect it to be like this for the rest of my life.

Simmons - direct

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1 So how has his murder affected me? Since I haven't
2 been able to think of anything worse than losing my child
3 it has made me extremely intolerant of people who whine
4 and moan about their little problems, problems that I
5 consider inconveniences. This has made me difficult to
6 deal with. I am generally not politically correct. I
7 don't like or want to be around foolish, stupid, or
8 ignorant people, regardless of who they are and what stage
9 they are in life. No one can intimidate me. I can't be
10 hurt by anybody or anything any more, and because I can't
11 change anything or anybody, I can only control me.

12 I have become a hermit. I stay away from people. I
13 don't socialize unless there is revenue to be made. I am
14 an American, and I believe in revenue, and I have a small
15 business.

16 On a personal level I see very few personal close
17 friends. I can count them on one hand. I talk to them
18 even rarer. I just want to be by myself.

19 There are days when I remember how difficult things
20 were for Mike growing up in Richmond, and I cry a great
21 deal. His problem with drug addiction was not his fault.
22 A great deal of it was. I don't deny that.

23 From the time he was a small child he has been
24 subjected to the ignorance of adults who refuse to treat
25 him as Mike. They always treated him as Bernie Simmons'

Simmons - direct

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1 son. They saw that bull crap on television that I used to
2 do, and they expected Mike to be like that. They never
3 were able to understand that I was doing a job, that that
4 was not my life. There are too many examples of how Mike
5 was mistreated by ignorant teachers, counselors and
6 principals in the Richmond Public Schools, and at a noted
7 private school here in Richmond. If I knew then what I
8 know now I would have moved us out of Virginia faster than
9 a speeding bullet.

10 There are days when I remember how much he tried to
11 get his life together, and I also remember how many bad
12 decisions he made, and I cry some more. I know how many
13 times he detoxed on his own in our family room trying to
14 get his addiction under control. I know how much he tried
15 to create a stable life with a steady job and how many
16 times he was let go from a job even though he performed
17 well. He was let go because he was a felon. I know how
18 much he tried.

19 His father, my ex-husband, died in January of 2002;
20 then months later Mr. McCord killed Mike. Mike never got
21 over his dad's death. It speeded up his fateful encounter
22 with Mr. McCord.

23 So finally, about the great Mike. He was a gifted
24 barber. He had an artist's eye for how things should go
25 together, and he was an excellent writer. He was hard

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1 working, very orderly, a place for everything and
2 everything in its place. He was merry. He dressed well
3 and he was neat with his person. He was handsome and an
4 alpha male that females, blind, crippled or crazy, loved.
5 He knew how to conduct himself in all kinds of social
6 situations. He could cook. Bar-B-Que and steak were his
7 specialties.

8 He could sew. Because he was a short man he learned
9 how to hem his own slacks to save money.

10 He and I were friends in addition to being mother and
11 son. We genuinely liked each other. Some of the best
12 experiences of him are when we would go shopping together.
13 That is when we talked about everything.

14 Mike's daughter, his Mary, here today. She was two
15 years old when Mr. McCord killed him. She won't remember
16 her father. We will try to help her remember when she is
17 ready.

18 I would not be truthful if I didn't say that the
19 reptile part of my brain wants to leap across this room,
20 pull Mr. McCord's heart out, hand feed it to him. That is
21 what the reptile part of my brain wants to do. The human
22 part of my brain wants to just go away, because it knows
23 that nothing said or done here today will make a darn bit
24 of difference. My son will still be dead. I miss him. I
25 am in pain all the time. But so what? The sun will

Simmons - direct

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1 continue to shine.

2 There is no malice in me towards Mr. McCord. I don't
3 want revenge, and justice is relative. Mr. McCord will
4 spend time in jail, short or long, it doesn't matter. I
5 am just sorry he couldn't find something else to do with
6 his life besides kill people and sell drugs. It is such a
7 waste.

8 So how has his murdered affected me? I am a
9 different person. Living is deeply challenging for me. I
10 have to work at it. I am learning to live with the pain
11 of loss and I cope and get through my days. There is no
12 joy. I don't expect to find purpose or meaning, it is
13 just what it is. All I know is I miss my son.

14 Thank you.

15 BY MR. DUFFEY:

16 Q Ma'am, you brought a picture in with you today.

17 A Yes, I did.

18 Q Could I ask you to show that to Judge Williams and
19 describe it?

20 A This was taken a year prior to his death in the fall
21 of 2001. He is in Charlotte. This is in our backyard.
22 That is his dog. I still have the dog. She is definitely
23 a young man's dog, not an old woman's. He has just
24 finished raking the leaves and cleaning the yard. Again,
25 this was the fall a year before his death.

Simmons - direct

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1 THE COURT: All right.

2 THE DEFENDANT: One of my favorite pictures.

3 BY MR. DUFFEY:

4 Q Finally, ma'am, you mentioned that Michael had a
5 young daughter at the time of his death, and she is here
6 today in the courtroom; is that correct?

7 A Yes.

8 Q She wrote a short note. I would ask you to read it.

9 A I don't have it with me.

10 Q I have a copy.

11 A She is seven years old. She does not remember her
12 father, although she remembers his dog. That may be
13 something there.

14 This is from Tyjasha. Daddy, I have been worrying
15 about you because I want to call so you can be safe and
16 have some good food. Love, Tyjasha.

17 Q Anything else you would like to say?

18 A I just would like to say as my statement, I have no
19 malice toward Mr. McCord. Revenge is not part of it.
20 Justice, I don't care. It is just all so sad. It is just
21 profoundly and deeply sad. This man is going to go to
22 jail for a long time, short time, it doesn't matter. I
23 don't understand. I don't understand why it has to be so
24 wasteful. Just continues on and on. I don't care how
25 long he goes to jail or not, because in the end it just

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1 doesn't matter. Nothing will change. I am finished.

2 Q All right.

3 Thank you, ma'am.

4 Any questions -- I don't think there are any other
5 questions.

6 THE COURT: You don't have any questions, do you?

7 MR. EVERHART: I don't, Your Honor.

8 THE COURT: Mrs. Simmons, thank you for being with us
9 and sharing your feelings.

10 THE WITNESS: Thank you.

11 MR. DUFFEY: That is all the evidence I have, Judge.

12 THE COURT: All right.

13 Mr. Everhart, come up to the lectern with your
14 client.

15 Do you care to allocute on behalf of your client?

16 MR. EVERHART: Please.

17 THE COURT: All right. You may proceed.

18 MR. EVERHART: Thank you, Your Honor.

19 May it please The Court, Your Honor, first on behalf
20 of Mr. Bruns and myself, and Lamont, who wishes to make a
21 statement at the appropriate time, we understand the loss
22 suffered by Mrs. Simmons and her family. And we are
23 deeply sorry for her, understanding that is of no great
24 moment and doesn't help her, we still wish to express that
25 to her, and to Michael's daughter as well.

1 Judge, we come before you -- you have the presentence
2 report. The Court, I hope, has reviewed the papers that
3 we filed on behalf of Mr. McCord, our position with
4 respect to interesting factors.

5 The Court has a wide range, and I think any and all
6 here would agree that even the minimum which is allowed at
7 this point is in essence a life sentence for Lamont
8 McCord.

9 Mr. McCord, as The Court may recall, this was set to
10 begin on a Monday. That weekend Mr. McCord decided to
11 plead guilty. His decision was no doubt influenced by the
12 fact that Miguel Morris decided that weekend he could
13 plead guilty and would cooperate against Mr. McCord.
14 Mr. McCord has been offered multiple opportunities prior
15 to that to be the first one in, shall we say. For reasons
16 known only to Lamont he chose not to do that.

17 The Court recalls the plea agreement that Mr. McCord
18 signed and what that plea agreement called for. Called
19 for Mr. McCord to cooperate truthfully with the
20 government. Mr. McCord has, we believe, done that. I
21 believe that the United States would agree with that.
22 Perhaps it might be said that Mr. McCord has been more
23 truthful than Mr. Morris regarding certain things,
24 including this case.

25 Nonetheless, the simple fact is that Lamont McCord

1 did what he pled guilty to. He killed Mr. Simmons,
2 participated in drug dealing, and you see what the
3 guidelines say. We do not know at this time, but we hope
4 that at some point we may return before this court. If
5 that happens, then we will address that at the appropriate
6 time. But we would ask you, Your Honor, as we ask or
7 suggested, I should say, in the papers we filed on
8 December 11, we would ask you to fix his sentence to a
9 term of years as opposed to life plus. I suppose it is a
10 distinction without a difference in many respects. But we
11 would ask you to consider doing that. The minimum term of
12 years which can be imposed is 600 months. That is 50
13 years. On top of that the ten years for the 924(c) count.
14 We would ask you to -- pardon me, it is 480 plus the 120.
15 360. It was 360 to life. We have the enhancement, so it
16 makes it 480 to life. And then plus the ten on top. So I
17 misspoke. It is 600 months is the minimum term that can
18 be imposed. We would ask you to consider imposing that 50
19 year sentence.

20 As I said, Your Honor, Mr. McCord wishes to make a
21 statement.

22 THE COURT: At this stage of the proceedings I am
23 required to give you an opportunity to address The Court.
24 I want you to call to my attention anything that you think
25 will be helpful to you before I pass sentence on you.

1 You may now proceed.

2 THE DEFENDANT: First of all, I want to apologize to
3 Mrs. Simmons. Even though Mike had an addiction, he was a
4 friend of mine. And that don't justify what happened. I
5 want to also apologize to his daughter because I know how
6 it feels. I lost -- lost a child myself in 2001 to a
7 mother. So a lot of ignorance plays a part in this case.
8 And I would like to apologize to everybody affected by it,
9 including my family as well.

10 Now I would like to apologize to The Court.

11 THE COURT: Do you have some family members present?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I will ask the Marshals to give you an
14 opportunity to visit with them before you go back to
15 prison.

16 Anything else that you want to say?

17 THE DEFENDANT: No, sir.

18 THE COURT: Will you submit it on the record as made,
19 Mr. Duffey?

20 MR. DUFFEY: Judge, I will. Just one caveat, if I
21 could, Judge. I would point out the guidelines -- I know
22 they are advisory -- but A 1 tells the court the
23 appropriate sentence is life. He is cooperating, but we
24 are not at that point today, Judge --

25 THE COURT: All right.

1 MR. DUFFEY: -- for The Court to follow that
2 recommendation.

3 THE COURT: All right.

4 Pursuant to title 18 United States Code section 3553
5 and the Sentencing Reform Act of 1984 I sentence
6 Mr. McCord to a total term of imprisonment of 540 months,
7 consisting of 360 months imprisonment on count one and 240
8 months of imprisonment on count three, to run
9 concurrently, and 180 months of imprisonment on count two
10 to run consecutively to counts one and three. This term
11 of 540 months of imprisonment shall run consecutively to
12 the sentence imposed in February of 2007 in criminal case
13 number 3:06 CR 00264.

14 In addition, he shall pay a special cost assessment
15 of a hundred dollars for each count, resulting in a total
16 of \$300, for the benefit of the Crime Victim's Fund.

17 Upon release from prison, he shall be placed on
18 supervised release for a period of six years on count one,
19 five years on count two, and three years on count three,
20 to be served concurrently. Within 72 hours of release
21 from custody he is to report in person to the probation
22 office in the district to which he is released. While on
23 supervised release he shall not commit any federal, state,
24 or local crimes, shall be prohibited from possessing a
25 firearm or other dangerous device, and shall not illegally

1 posses a controlled substance. In addition, he shall
2 comply with the standard conditions of supervised release.
3 He shall also comply with the following special
4 conditions. He shall participate in a program approved by
5 his probation officer for substance abuse, which program
6 may include residential treatment and testing to determine
7 whether he has reverted to the use of drugs or alcohol.
8 Cost of these programs and testing are to be paid for by
9 the defendant. He also shall participate in a program
10 approved by his probation officer for mental health
11 treatment, and to include anger management. And the cost
12 of these programs are to be paid for by the defendant.

13 He also shall provide his probation officer access to
14 any requested financial information. I have considered
15 the defendant's net worth and liquid assets, his life
16 style and financial needs and so forth, and find that he
17 is not capable of paying a fine. The court also finds
18 that there is no identifiable victims requiring
19 restitution at this time, but that does not preclude
20 anyone who feels they are entitled to restitution from
21 filing the appropriate paper work in the future, and The
22 Court will rule on it at that time. But as of now there
23 is no information before me that would result in any
24 restitution. I also adopt the presentence report without
25 change, and find that the sentence imposed is fair and

1 reasonable, and is within the advisory guideline range,
2 which in the exercise of judicial discretion was found to
3 be consistent with the requirements of title 18 U.S.C.
4 section 3553(a).

5 Mr. McCord, while I understand that you have waived
6 your right to appeal The Court's sentence, you may not
7 have waived your right to appeal any alleged
8 Constitutional violations that you think occurred while
9 the case against you was being processed. If you elect to
10 exercise your right to appeal any such alleged violations
11 you would have ten days from today to do so. You also
12 will be given credit for time served to date pursuant to
13 title 18 United States Code section 3585. And I recommend
14 that you be housed in a facility as near your family as
15 possible, and that you participate in the BOP's 500 hour
16 intensive residential substance abuse treatment program,
17 participate in mental health treatment, and receive
18 vocational training while you are incarcerated.

19 I now remand you to the custody of the Attorney
20 General for execution of your sentence, and I wish you
21 well until in the future, and hope that the Marshals will
22 give you little time to visit with your family before you
23 go back to the facility where you are serving your time.
24 I also recommend that you be housed in a facility near
25 your family.

1 MR. EVERHART: Thank you, Your Honor.

2 THE COURT: What time tomorrow?

3 THE CLERK: 10:00 o'clock.

4 HEARING ADJOURNED

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6 Certified true and correct transcript.

7

8 Gilbert Frank Halasz, RMR

9 Official Court Reporter

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